

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action dated September 4, 2008 (“Office Action”). Claims 1-2 and 4-8 are amended as set forth above. Applicant submits that no new matter has been added with the amendments. Claims 1-2, 4-9, 11-16 and 18-20 are currently pending in the application. Applicant respectfully requests reconsideration of the application in accordance with the following remarks.

Section 112, First Paragraph Rejections

Claims 1, 7, 8, 14 and 15 stand rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. Specifically, the Office Action asserts that “[t]he claim(s) contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” Office Action, p. 2. Applicant respectfully traverses the rejections under § 112, first paragraph, and submits that the originally-filed application provides disclosure sufficient to reasonably convey possession of the claimed subject matter at the time of filing.

With regard to Claim 1, the Office Action asserts that the element “a client identifier string” is “not described in the specification and therefore it is considered new matter.” *Id.* Importantly, Applicant notes § 2163(I)(B) of the MPEP explicitly states that the written description requirement does not include an *in haec verba* requirement stating that the words used in the claims must exactly match those used in the specification. MPEP § 2163 (emphasis added). Instead, “newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure.” *Id.* Further, the MPEP states that the “the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed.” *Id.* (citation omitted). With this in mind, Applicant respectfully traverses this rejection because the specification as a whole “conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. *See, e.g., Vas-Cath, Inc.,* 935 F.2d at 1563-64, 19 USPQ2d at 1117; M.P.E.P. § 2163.

For example, with regard to the claim element of “a client identifier string,” Applicant first directs the Examiner’s attention to p. 3, lines 18-21 of the specification, which states that “[i]n one implementation, the client identifier is a user agent identifier that is included within an HTTP (Hypertext Transfer Protocol) request received from a Web browser running on the client. The user agent identifier is a parameter that is included in the header of an HTTP request and that identifies the type of browser (e.g., Internet Explorer, Netscape).” *Present Application*, page 3, lines 18-21. Further, in certain implementations a comparison between a received client identifier and one or more of the stored client templates “involves comparing a received user agent [identifier] string with a stored browser template string.” *Id.* at page 3, lines 22-23; page 4, lines 1-2. As the specification describes for certain implementations, the user agent string (which itself is an example of a particular user agent identifier) is an example of a client identifier. Thus, a person of ordinary skill in the art would understand that the element “client identifier string,” while not explicitly recited in the specification itself, is implicitly described in the specification’s description of the user agent string used in the comparison with the one or more stored browser template strings.

As such, while the foregoing are merely examples, they clearly provide sufficient evidence that Applicant had “possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention.” *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 U.S.P.Q.2d 1961, 1966 (Fed. Cir. 1997); MPEP § 2163. Accordingly, Applicant respectfully submits that Claim 1, as well as its dependents, comply with the written description requirement, and request that the rejections under 35 U.S.C. § 112, first paragraph, be withdrawn. Further, as the Office Action states that “Claims 7, 8, 14 and 15 are rejected under the same rationale as claim 1,” Applicant further requests that the rejections under 35 U.S.C. § 112, first paragraph, for Claims 7, 8, 14, and 15 (and their dependents) also be withdrawn.

Section 112, Second Paragraph Rejections

Claim 1 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly “being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.” Office Action, p. 2. Specifically, it is asserted that the Claim 1 preamble reciting “the computer program operable to cause data processing...” renders the claim indefinite because it is unclear what the preamble pertains to. While Applicant respectfully traverses the § 112, second paragraph rejection of Claim 1, the preamble of Claim 1 has been amended to recite “[a] tangible computer-readable medium storing instructions for selecting a renderer, the instructions operable when executed to...” Also, as indicated above, the preambles of Claims 2 and 4-7 have been amended to address their (direct and indirect) dependencies on Claim 1. Thus, Applicant respectfully submits that Claim 1 is amended solely to further prosecution by more precisely identifying the original statutory class and, thus, is definite such that it particularly and sufficiently points out and distinctly claims the subject matter which Applicant regards as the invention. As such, this amendment does not affect the scope of the claims and Applicant further requests that the rejection of Claim 1 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Section 102 Rejections

Claims 1, 2, 4-9, 11-16, and 18-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,560,604 to *Fascenda* (“*Fascenda*”). Applicant respectfully traverses these rejections and assertions and holdings therein because *Fascenda* fails to teach, suggest, or disclose each and every element of the present claims as required by law.¹

Specifically, the Office Action identifies two comparisons disclosed by *Fascenda* and equates them to the Claim 1 elements of generating a score for a comparison between a client identifier string and one of a plurality of client templates, each template associated with a particular renderer, where the score is generated by computing the number of matching characters in the client template divided by the number of characters in the client identifier string. However, the two comparisons disclosed by *Fascenda* – (1) a comparison of a client device’s 108 unique identifier with a database of unique identifiers to validate the client device 108 using or accessing a communications system 100 (see *Fascenda*, 6:13-38), and (2) a

¹ A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. The identical invention must be shown in as complete detail as is contained in the claim. See *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

comparison of a client template 314 associated with the device's 108 request for information with one or more template databases to determine whether the requested template 314 is available and/or up-to-date (*see id.* at Abstract, 16:1-19) – merely teach or describe determining whether information received from or associated with a particular client device 108 is identical to certain stored or identified information. Therefore, *Fascenda* at least fails to teach, suggest, or disclose the Claim 1 elements of “general[ing] a score for each comparison [of a particular client identifier string with one or more client templates associated with a renderer], the score reflecting the similarity between the client identifier string and the client template,” and further, “wherein each score is generated by computing a number of matching characters in the client template divided by a number of characters in the client identifier string.”

For instance, *Fascenda* first teaches comparing a particular client device's 108 unique identifier (which is included with transmissions from the client device 108) with a maintained database of unique identifiers to determine whether the client device 108 associated with the transmission is authentic or authorized in order to prevent fraudulent communications, instructions, or transfers within the communication system 100, as well as to track information associated with and/or transmitted by a particular device 108 (e.g., by tracking the locations of cell sites 102 in communications system 100 where transmissions associated with the client device's 108 unique identifier are received). *See id.* at 6:13-38. The comparison is a simple determination of whether an identical match exists in the maintained database – if no identical match is found, then the *Fascenda* system determines (or implies) that a fraudulent or incorrect unique identifier was sent by the client device 108 and thus may prevent and/or restrict further communication. *See id.* However, this comparison fails to teach or suggest each of the elements of Claim 1 because the comparison merely identifies whether an identical match between the unique identifier transmitted by the device and one of the unique identifiers in the database exists. In other words, the unique identifier comparison fails to generate a score for the comparison that reflects the similarity between a client identifier string and a client template as recited in Claim 1. Even further, since no score is generated (or for argument's sake, even assuming that a score is generated), *Fascenda's* unique identifier comparison clearly fails to teach or suggest generating the score “by computing a number of matching characters in the

client template divided by a number of matching characters in the client identifier string" as further recited in Claim 1.

Further, *Fascenda*'s second comparison of determining whether a particular client device 108 is associated with (or stores) a particular version of a requested client template 314 also fails to teach or suggest each and every element of Claim 1. As described by the reference, each request for information by a user of a client device 108 is associated with a particular stored template 314. *See id.* at 15:59-67. Once that user's request for information is received, the "client device 108 queries [a] client template database 310 to determine whether an appropriate template 314 associated with the request is locally available." *Id.* at 16:1-3. If the appropriate template is locally available, the client device 108 simply retrieves the template 314 from the client device's client template database 310. *See id.* at 16:20-22. If, however, the appropriate template is not locally available, the client device 108 requests the appropriate template from server 114. *See id.* at 16:4-7. The receiving server 114 identifies the client device 108 (e.g., by using the unique identifier of the client device 108 included in the request), and retrieves the template identifier associated with the requesting client device 108. *See id.* at 17:1-11. Server 114 then determines whether the client device 108 is associated with and/or stores the most current template version by comparing the template version identifier 906 retrieved from the client device's 108 request with the template version identifier of the newest (or most up-to-date) template definition. *See id.* at 17:21-27.

Unlike Claim 1, this second *Fascenda* comparison fails to teach or suggest generating a score based on the comparison between a client identifier string and a client template as recited by Claim 1. Similar to the first comparison, *Fascenda*'s template version comparison looks solely for, and is only concerned with, an identical match between the two template versions. If the template version identifier 906 associated with the device's 108 request is not identical to the newest template version, then server 114 sends the client device 108 the most up-to-date template version for local storage. *See id.* at 17:28-49. Even assuming – for the sake of argument – that the template version comparison can be equated to generating a score for the comparison in Claim 1, *Fascenda* again clearly contains no teaching or suggestion of generating the score "by computing a number of matching characters in the client template divided by a number of matching characters in the client identifier string" as further recited by Claim 1.

Accordingly, *Fascenda* and its comparisons fail to teach, suggest, or disclose each and every element recited in example Claim 1. For at least the above reasons, Applicant respectfully requests withdrawal of the § 102 rejection, as well as reconsideration and allowance of Claim 1 and its dependent claims. Further, independent Claims 8 and 15 recite certain elements similar to those of Claim 1. For at least reasons analogous to those discussed with regard to Claim 1, independent Claims 8 and 15, as well as their dependents, are also allowable over *Fascenda*.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. It is believed that all of the pending claims have been addressed. Applicant notes that the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all claims.

If the present application is not allowed and/or if one or more of the rejections is maintained, Applicant hereby requests a telephone conference with the Examiner and further request that the Examiner contact the undersigned attorney to schedule the telephone conference.

Applicant believes no fees to be due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to deposit account 06-1050 referencing the above attorney docket number.

Respectfully submitted,

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